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FILED

APPENDIX

In The

Supreme Court of the United States

October Term, 1973

No. 73-675

CHARLES WOLFF, JR., et al.,

Petitioners,

v.

ROBERT O. McDONNELL, et al.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI
FILED OCTOBER 22, 1973

PETITION FOR WRIT OF CERTIORARI
GRANTED JANUARY 21, 1974

CLARENCE A. H. MEYER,
MELVIN KENT KAMMERLOHR,

Attorneys for Petitioners.

GIBBS PRINTING CO., 1000 Main Ave., Sioux City, Iowa

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RELEVANT DOCKET ENTRIES

In the United States District Court
For the District of Nebraska

ROBERT O. McDONNELL, individually and on behalf of all prisoners in the same class as plaintiff incarcerated at the Nebraska Penal and Correctional Complex, Lincoln, Nebraska, and on behalf of all other persons who in the future may be confined in the Nebraska Penal and Correctional Complex,

Plaintiff,

vs.

MAURICE H. SIGLER, individually and as Warden; CHARLES WOLFF, JR., individually and as Associate Warden of Custody. RONALD B. JONES, individually and as Associate Warden, Care and Treatment; their agents, employees and servants, all employees of the Nebraska Penal and Correctional Complex, Lincoln, Nebraska,

Defendants,

MEMORANDUM

Of Papers Filed, and Date of Filing

Civ. 1722 L

Jan. 11	1971	21.	Amended Complaint. Exhibits attached.
Mar. 29	1971	24.	Temporary Injunction (WKU)
Mar. 31		25.	Defs' motion to reconsider & w/d Temp. Injunction.
		26.	Order (WKU) for hrg. to reconsider Temp. Inj.
Apr. 19		28.	Order (WKU) staying temp. inj. pending further order (Filing No. 24)

Jul. 28	1971	34.	Order (RVD) re: Visitation Rights, etc.
Aug. 17	1971	36.	Report of Pre-Trial Order (RVD).
Aug. 24	1971	39.	Df's Answer.
Oct. 1,	1971	42.	Stipulation of Facts.
Oct. 1,	1971	43.	Transcript of hearing before Hon. W. K. Urbom.
Nov. 23,	1971	51.	Exhibit List.
Apr. 21,	1972	55.	Order (RVD).
Jun. 1	1972	70.	Transcript of Trial—11/23/71.

STIPULATION OF FACT

(Filed October 1, 1971)

In the United States District Court
For the District of Nebraska

Civ. 1722 L

[Vol. I, Filing 42]

ROBERT O. McDONNELL, individually and on behalf of all prisoners in the same class as plaintiff incarcerated at the Nebraska Penal and Correctional Complex, Lincoln, Nebraska, and on behalf of all other persons who in the future may be confined in the Nebraska Penal and Correctional Complex,

Plaintiff,

vs.

MAURICE H. SIGLER, individually and as Warden; et al.,

Defendants.

• • • • •

3. The regulation regarding censorship of mail to and from attorneys. All mail from attorneys to inmates and from inmates to attorneys at law is inspected and purportedly read for contraband or for security reasons. If a letter contains no risk to security or no contraband, it is immediately passed on to the inmate, or to the attorney.

There exists a transcript of testimony adduced at a hearing before The Honorable Warren K. Urbom, Judge, on April 15, 1971, in Lincoln, Nebraska, attached hereto as Exhibit A and made a part of this stipulation.

• • • • •.

5. The procedure that prohibits one inmate from assisting another inmate in the preparation of legal documents. The inmate legal assistant is the only inmate specifically approved to assist other inmates in the preparation of legal documents without the express approval of the warden. An inmate may make a request to the warden that another inmate (not the inmate legal assistant) be allowed to assist him in the preparation of legal documents; the warden may or may not grant this request depending upon the circumstances. The affidavit of inmate legal assistant Maddox describing his responsibilities is attached hereto and made a part hereof as Exhibit B1.

• • • • •.

12. The procedures used in taking good time credit from inmates. See Exhibit C attached hereto and made a part hereof.

13. The Inmate Handbook of March, 1970, is not all inclusive, but is a broad outline of the rules and regulations of the Complex to which the inmates are subject. It is attached hereto and made a part hereof as Exhibit D. Attached to Exhibit D is Exhibit E, 12 additional directives of the Complex numbered E1 through E12 of which the inmate is also charged with knowledge. It is hereby made a part of the stipulation of facts. Exhibits D and E are admitted into evidence in the above entitled action.

14. That Exhibits A through H, as attached to the Amended Complaint in the above entitled cause of action are true and correct copies of the documents which they purport to represent, and if called as witnesses in the above entitled action, all persons whose names appear signed to Exhibits A through H would testify as to the authenticity of their signature and that the Exhibits A through H do correctly represent the matters on the face thereof and, therefore are admitted into evidence in the above entitled action.

• • • • •

ROBERT O. McDONNELL, et al.,
Plaintiffs,

By /s/ Robert O. McDonnell

MAURICE H. SIGLER, et al.,
Defendants,

By /s/ Mel Kammerlohr
Mel Kammerlohr
Assistant Attorney General

Their Attorneys

Note: Exhibit C1 to Filing 42, found at Vol. IV, pp. 3-7, of the Record the "General Policy and Procedure." *Inmate Control Misconduct and the Adjustment Committee*, April 1, 1971, is found at Appendix Q of Petition for Writ of Certiorari, App. 44-47.

(Title omitted in printing)

TESTIMONY OF MAURICE SIGLER

[Vol. III, 3:4-10:12]

[Page 3] Q. Will you state your full name please?

A. My name is Maurice Sigler.

Q. And what is your business or profession, Mr. Sigler?

A. I am director of the Division of Corrections in Nebraska; and I suppose I should add also Warden of the prison.

Q. And is that of the Nebraska Penal and Correctional Complex?

A. That is correct.

Q. And is that the same institution that the petitioner herein is now in custody?

A. That is correct.

Q. How long have you been associated with the Nebraska Penal and Correctional Complex?

A. It will be 12 years the 22nd day of June of this year.

Q. And has that been as warden all that period?

A. I have been warden there all that time.

Q. What was your experience with penal institutions prior to that time, if any?

A. I began this work in 1939 in Leavenworth, Kansas, in the federal institution there. I was there 7 years with two years out for the war. I was in Seagoville, Texas, in another federal institution for seven years; and about six and one-half years as warden of the penitentiary in Louisiana — the [Page 4] state penitentiary there. And

I served a year doing research and training work in the Department of Corrections in Florida before coming here.

Q. Now in all that penal administration you have had, has it been your practice to enforce censorship of mail rules between inmates and their attorneys or of attorneys and their inmates?

A. Yes, sir.

Q. And is that done at the Nebraska Penal and Correctional Complex at this time?

A. Yes, sir.

Q. Now is it your purpose to stop the mail that goes from inmate and his attorney, and the attorney to the inmate?

A. No, sir.

Q. What is the purpose of censoring this mail?

A. Censoring has only one purpose, and that is for security of the institution.

Q. All right. Can you tell the Court what your — first what your theories of how this relates to security are?

A. Well throughout the years the mails have been used for introduction of contraband into institutions everywhere. Money is easily introduced through the mail; narcotics are easily introduced through the mail; escape plots are easily introduced through the mail — and I have had experience in all of these.

[Page 5] Q. All right. Other than just a *fear* that you may have, you have had some actual experience with some of these things?

A. I have had experience with all of those things.

Q. Can you just describe what specific instance you may know of that —

A. Well I couldn't tell you how many times money has been found coming in, in an unauthorized manner, coming

in through the mail. We have had powdered heroin come in through the mail during my tenure of office. Within the past 18 months or 2 years — about 18 months, we were able to head off a big escape in the institution through mail detection.

Q. That was here at the Nebraska Penal Complex?

A. That was right here at this institution. And incidentally we have had money come into the mails — come in through the mails here in an unauthorized manner.

Q. All right. First, on this money matter, what harm can unauthorized money do to a penal institution?

A. Well money in a penal institution is much more valuable than it is on the street. In other words, a little of it will do much more than a like amount will do on the street. It can be used to coerce employees, which it is very frequently. We are constantly on the alert to keep employees from introducing contraband into the institution. I am speaking of pills — narcotic pills, things of this sort. [Page 6] Even weapons. This is something we find all the time. In fact, in this state we have had, right offhand I can think of two employees who have been caught doing these things, and ultimately put into court and convicted and served time at the complex.

Q. Well now as a matter of procedure do you have different areas at the complex where it may be easier for an employee to bring something in to an inmate than in other areas, or something of that nature?

A. No, I don't think so. The contraband is brought in on the person of an employee; and these employees, I of course am speaking primarily of untrained, newer custodial help — that is uniformed help. I would want to make it very clear here that not all of our people — very few of our people are dishonest. But these are things that happen, and they happen constantly. The first time I can remember of anything like that happening was in 1941 in Leavenworth, Kansas, in the federal prison. That is the first experience I had with this — and that is a long

time ago. But it has been going on constantly throughout the years — this thing.

Q. And if you didn't have this one safeguard of preventing money or other things coming through the mail would this cause you to have to tighten up some other place?

A. Well, yes because — the fact of the matter is this would be one area we wouldn't be able to tighten up on until we found [Page 7] the money or until we found somebody caught in the act of bringing something into the institution. I might say, the most recent money that we picked up was probably about 7 or 8 weeks ago in the amount of $55 — maybe a little longer than that. But this is a constant source of problems in prisons.

Q. Well if a man had enough money just what could he do with it other than buy — ?

A. He could just about buy anything. We know this: That a gun — a loaded gun was introduced into our institution. We got the gun with 7 bullets in it some years ago. That is one thing that can be done. The most common thing that is done with money in a place like ours is the introduction of narcotic-oriented materials; pills; a thing called "Wyamine" inhaler — I have seen those sell as high as $5 in prison, because of the fact you can take the body from them and soak it in water and inject it into your vein or you can take it and chew it — whichever you prefer. Those are the most common things.

Q. Have you had any experience of violence in your institution here in Nebraska of rioting or individual violence or —

A. Well individuals, yes. Many I would say, relatively speaking because we have it often. Some people might not think it was often, but it will average several times a year.

Q. What provocation usually starts this off?

A. Well as a rule, a man who is serving time before he will — [Page 8] as a rule before he will do something

like that must be under the influence of something that will give him a false courage, either pills or liquor. I haven't mentioned liquor, but it hasn't been 10 days since we caught an inmate outside the walls drunk; and he had a bottle of good Vodka — it was a licensed Vodka — in fact he had two bottles of it.

Q. When you say outside the walls, you mean —

A. Minimum custody. Well you know at the complex out there we have minimum custody quarters and then we have close and medium. Close and medium are inside the walls. The minimum custody people live outside the walls; and this is where this happened.

Q. So he still wasn't able to go to a liquor store and obtain it?

A. Oh, no.

Q. Somebody must have brought it in and —

A. Somebody brought it in.

Q. Do you feel that if they didn't have money that you didn't know about it would be much more difficult to obtain contraband?

A. Oh, yes; because that is the name of the game everywhere — money. And these people won't introduce for the most part — I suppose there have been occasions when somebody stupidly brought something in for no monetary gain of any [Page 9] kind; but the way this is done is that unscrupulous inmates prey upon employees who are naive, maybe have a little larceny in their heart anyway; and this is the way this sort of thing is done in prisons everywhere — and ours is no exception.

Q. Specifically getting down to attorneys, have you had any Nebraska attorneys in your custody committed by a court?

A. Several.

Q. Since you have been out here at Nebraska?

A. Several.

Q. And in there for crimes?

A. Crimes — felonies. They were placed there by the court.

Q. When you say several, can you give us an idea of —

A. Oh, I would say 5 or 6; I can name 2 or 3. A man named Massey was there and I believe Haines, Paul Rhodes — but that isn't all of them. I just don't right at this time —

Q. Was there an attorney named Stan Scott?

A. He was there. The fact of the matter is when I came — right after I got here he came to this prison.

Q. Markel?

A. Markel — I remember that name.

Q. Other than attorneys being committed, have you had any experience with any attorneys possibly naively violating your security there?

A. Well we know that, and this isn't — we know that happens, [Page 10] and it has been detected a number of times. The most dramatic case of a man who is an attorney doing something that would be extremely dangerous to the welfare of the institution, as he came into the turnkey area — the turnkey area is in the first locked gate inside the main prison — a few years ago; and when he was asked if he had anything in his briefcase he said "no"; and we said "well, do you mind if we look?" And he said "no". And he had a loaded .38 in it. He got that close to inside the prison with it. I don't believe this man had any evil intentions with this gun at that point; but he did have it with him, and we took it away from him.

• • • • •

[Vol. III, 15:10-20]

[Page 15] Q. And you have never communicated any information from an inmate to his client — or from an attorney to his client to the State Attorney General's office?

A. We don't tell anybody anything. May I just offer this to further answer that question?

Q. Sure.

A. This is so much a part of our operation today that it is just about as common — it is as common as going to mess hall. I don't think there is a day but that some sort of a writ leaves that institution going somewhere; and it is just standard operating procedure.

• • • • •

[Vol. III, 16:20-17:20]

[Page 16] Q. Warden, has Mr. McDonnell been involved in any of these escape plans that you talked about through the mails?

A. No.

Q. And I take it I haven't so far as you know been involved in any of these?

A. No.

[Page 17] Q. You haven't uncovered anything that I was involved in?

A. Oh, no; no, sir.

Q. Now do you censor mail from judges?

A. We open the mail from everybody.

Q. Do you censor the mail from judges?

A. Yes.

Q. And the mail from everybody that comes in?

A. Everybody.

Q. Now so far as the contraband is concerned, you don't have to read the letters to find out whether there is contraband in the envelope, do you?

A. No; not if there is contraband.

Q. And we are talking about money is contraband and narcotics — ?

A. You can see that.

Q. And all these other items that are contraband?

A. Yes, sir.

Q. So as far as actual censorship is concerned you don't have to read the letters to determine whether or not any contraband is being sent in to an inmate?

A. Not in that letter.

• • • • •

[Vol. III, 21:4-21]

[Page 21] Q. Now in this particular case, do you know if any restriction has been placed on Mr. McDonnell about obtaining information from other inmates concerning claims of denial of rights within the penitentiary?

A. What do you mean by restriction?

Q. Well do you know whether or not Mr. McDonnell has been prohibited by your internal rules and regulations from obtaining the names of inmates within the penitentiary who claimed to have had civil rights violated?

A. This would not be true. It might be that he has been denied the privilege of working with other inmates, other than our man who has been appointed to — inmate who has been appointed to handle this deal. I don't know whether Mr. McDonnell has been in there or not, but he has been everywhere in the yard. There would be no reason he couldn't visit with anybody that was there; but he is not prohibited from visiting with anybody who is not under punishment — and Mr. McDonnell is not under puishment.

• • • • •

[Vol. III, 24:13-18]

[Page 24] Q. As I understand it so far as contraband is concerned, this is a major concern of yours—you don't have to read the mail to determine whether or not there is any contraband in it?

A. No, you don't have to read it — anything you can see, of course, you don't need to read.

• • • • •

[Vol. III, 25:22-27:11]

[Page 25] Q. You are not trying to prohibit the exchange of ideas?

A. Oh, no; we don't even listen to those. It is none of our business.

Q. And actually the exchange of mail, isn't that an exchange of [Page 26] ideas?

A. Well again the reason we don't allow them to exchange mail we want these things recorded.

Q. But I mean the exchange of thoughts through the mail, isn't this an exchange of ideas?

A. Well it could be; yes, I would think so.

Q. As I understand it, it is not your purpose though in censoring it to interfere with the exchange of ideas; that you are really looking for contraband or you are looking for escape plots?

A. We are looking for the safe conduct of that institution and nothing else. We have a constant turnover of people. We have on an average — well right now the count is 991 people, and we don't know much about any of them; and so to answer your question, we do search carefully. If we do our job right then we won't have any trouble.

Q. How is the safe conduct of the institution impeded by not censoring the exchange of ideas between the attorney and inmate?

A. Well I have tried to answer that question before; but I will put it this way: Dope can be — there is an expert in the room who will probably testify to this, but I will try to answer it. LSD — one drop of LSD can be dropped on a piece of paper, and that is enough to give a guy a trip. On one sheet of paper, I wouldn't attempt to tell you — I [Page 27] don't know how many drops of LSD could be effectively placed, but this could happen. And it is not the attorney exactly — I would not be scared of you, for example. But I know this, unscrupulous people can get your — can get the envelopes with your name on it; they can get correspondence with your name on it; they can get pictures. We have forgers come into our penitentiary nearly every day of the year, and they beat people all over the state — and so they can beat us. And let me assure you, sir, that most people who are in court are not above trying to do these things.

* * * * *

[Vol. III, 28:4-29:9]

[Page 28] A. * * *. Now in Lincoln, Nebraska, maybe this won't happen because the people live right here — but this thing I was talking about earlier, the escape plot, this was not within this state — and all attorneys don't work out of Lincoln, Nebraska — and this is why I say this is an extremely dangerous thing.

Q. But couldn't, if someone was going to conceive an escape and were going to plot it couldn't the wife visit her husband?

A. Maybe not. Maybe she is too far away. Maybe they are other people in the whole community. You don't just deal — on this escape plot there was one — two — five people involved that I know about at this point.

Q. Was it all carried on through the mails?

A. All the information went out through the mail with the exception of one visit.

Q. Didn't you get your information through some other source before—

A. I got, to begin with, yes, sir; but I was told also how to detect it.

Q. It was a snitch?

A. It was a snitch; yes, sir. And Mr. McDonnell knows who he is, [Page 29] and all of this I will concede to you; but this is the way we did it.

Q. Was the mail that you censored and picked this out, was this coded?

A. Oh, yes.

Q. You wouldn't have picked it up in any event without the informer?

A. In this particular thing I don't think I would have, because it was very well done.

* * * * *

[Vol. III, 31:22-34:7]

[Page 31] Q. I take it, so far as attorneys are concerned, your restriction is based upon the possibility of an unscrupulous attorney collaborating with an inmate?

A. That, I guess, is one way to say it. The reason we do it is, [Page 32] we have one rule for everybody—everybody. We make no exceptions. And we don't consider anybody to be unscrupulous; but it is our responsibility to see—this is the kind of oath I take, that we don't allow anything dangerous to come in or go out; and that the safety of the people are my responsibility; that is, the men with numbers. It doesn't say anything about the safety of the employees being my responsibility, but it does say I believe very clearly the safety of the institution is the responsibility of the administration.

Q. And weighing all these factors, it is your judgment that the possibility of an unscrupulous attorney is such that you feel that this type of mail needs to be censored?

A. Yes. Well, I would say there is just as much possibility of there being an unscrupulous attorney as there is an unscrupulous plumber — and so, yes; the answer would be yes.

Q. You are not basing this on any —

A. No facts.

Q. It is just a general —

A. Other than the fact, as you stated a moment ago, that everybody from all professions come to the penitentiary, which they do; which means that people from all professions can be crooked. And I am not able to detect a man's honesty or crookedness by the way he looks. This is what I was trying to say.

[Page 33] Q. You indicate you are not experts in detecting forgers. Do you have experts to determine whether or not there is LSD, a drop on a piece of paper?

A. No; but we can tell whether there is something wrong with the — you know, if it doesn't look right why we hold it out. We have taken things before. I don't know whether I have here or not, but I have submitted mail in the past that looked — especially in the place where we had many narcotic offenders — that didn't look good — I submitted it to laboratories.

Q. Did any of this mail come from an attorney?

A. I don't think so.

Mr. Kauffman: I have no further questions.

The Court: Mr. Kammerlohr.

MAURICE SIGLER

Reredirect Examination

By Mr. Kammerlohr

Q. What you said a while ago about unscrupulous attorneys could also apply to naive attorneys in the ways of prisons, isn't that true?

A. This is correct.

Q. In other words, an attorney may not necessarily know there isn't anything wrong with sending $100 in to his client on somebody's request?

A. I can illustrate it this way: Not too long ago an attorney [Page 34] carried a letter out for a man, which is absolutely against all regulations. He still comes out to our place after we had a visit with him. I am sure he did it because he was naive. I don't consider the man to be unscrupulous or crooked in any manner. But he was naive to the point that he allowed this inmate to talk him into carrying the letter out; and he told me he did.

* * * * *

(Title omitted in printing.)

TESTIMONY OF JOHN B. GREENHOLTZ

[Vol. III, 38:4-41:17]

[Page 38] Q. Will you state your full name please?

A. John B. Greenholtz.

Q. Will you tell the Court your present profession or employment, Mr. Greenholtz?

A. I am the Chairman of the Nebraska Board of Paroles.

Q. And prior to that position did you have a position at the Nebraska Penal and Correctional Complex?

A. Yes.

Q. And what was that?

A. Deputy warden.

Q. How many years were you deputy warden?

A. 21.

Q. Did you have any other penal experience before that?

A. I was a captain a couple or three years, and then I was assistant deputy warden prior to that until I was appointed deputy warden.

Q. Now have you heard Warden Sigler testify to the Court here just ahead of you?

A. I did.

Q. And did you hear him tell about his experiences with the rules as far as censorship of mail is concerned?

A. I did.

[Page 39] Q. Do you have any theories different than the warden's or would they be about the same as to why mail should be censored and so on?

A. I would have to agree with everything he said, because it is utterly important that he does have censorship for the security of the institution. You must remember we have all types of people there and for various reasons. Some of them are accomplished forgers. One method that wasn't brought up is some of the print shops will print any letterheads or forms, and they could be used by unscrupulous people in order to introduce contraband into the institution, pass out escape plots, and so forth. And as he also mentioned, this mail, if it was ever ordered by the Court that no one could touch it, it would be a most logical place to hide contraband. And they must continually have searches to prevent the accumulation or introduction and accumulation of contraband.

Q. They must continually or regularly search the cells of the inmates?

A. The cells and person of inmates, and areas of the institution. Not only just the cells but all other areas.

Q. Now was this censorship practiced at the penal complex the years you were out there about the way the warden described it?

A. Yes, sir. And we have prosecuted employees for bringing [Page 40] in contraband and attempting to take out sealed letters to people passing the censorship.

Q. All right.

A. And incidentally there is one case — Mr. Meyer knows about this, because I referred it to him, an attorney in Lincoln at the present time — I won't mention his name — attempted to take out a sealed letter. His excuse was he didn't know it was against the rules and regulations. I am not saying he wasn't naive and gullible, but he did attempt to do it.

Q. This was how long ago?

A. About three years ago.

Q. While you were still deputy warden?

A. Yes, sir. And he is still practicing law incidentally so — he wasn't prosecuted. I just called it to the Attorney General's attention, and he wrote him a letter explaining the policies, and so forth. I wanted him to handle it, rather than us.

Q. Now then, have you heard the Warden's testimony about some of the evils of getting unauthorized money in to an inmate?

A. Yes, sir.

Q. Would you agree they would be able to use this money for obtaining weapons or contraband?

A. Special favors, contraband, attempt contraband — any item [Page 41] that is considered contraband in the institution. If some of our employees, which unfortunately are not the type of people who are highly educated, and

they don't learn too much of the background; and they have been used — some of them as I have mentioned are naive and gullible—and we have some inmates confined there, offenders confined that make you think white is black.

Q. And they are —

A. Very persuasive.

Q. And they persuade these employees to do things?

A. And they have ways of threatening people, intimidate them, extortion, and so forth.

Q. Now if an inmate has unlimited use of the mails or uncensored use of the mails would you think he might ever do that through the mail — intimidate — ?

A. It would be the biggest loophole I can think of at the present time for the introduction of contraband.

• • • • •

[Vol. III, 46:4-13]

[Page 46] Q. If a way could be devised so that you wouldn't have to read the contents but could still continue to search for contraband this would promote your policy?

A. All I could see is problems evolved from it.

Q. You are assuming that a way can't be devised, I take it?

A. Not that I can think of that would be satisfactory to all concerned, because the first time a custodial officer walks in his cell to search immediately he would have a problem with the inmate. If the inmate wasn't there he would still accuse him of it.

• • • • •

(Title omitted in printing.)

TESTIMONY OF ROBERT O. McDONNELL

[Vol. II, 25:10-22]

[Page 25] Q. To the best of your knowledge have you ever been written up for helping another inmate? First of all, what does "written up" mean?

A. A write up is a procedure in a disciplinary action where they take you in front of a disciplinary board and take away your good time.

Q. Well, they don't necessarily do that, do they?

A. Well, you are indoctrinated in the I. D. C. and I used to be a clerk over there and in the speech given by Mr. Jones and Mr. Wolff when they speak over there was that any appearance in front of a disciplinary board is an automatic loss of five days.

• • • • •

[Vol. II, 26:1-19]

[Page 26] Q. How many requests for assistance do you receive in a week or have you received in a typical week, do you have any idea?

A. Sometimes one or two, sometimes more. It varies, it is sometimes just for advice and sometimes just conversation.

Q. Do you send kites or have you sent kites on more than one application or more than one incident to get permission to help an inmate besides the evidence we have introduced here?

A. I think I have written two or three times and in conversations I get the idea it is futile to write. I get no answer and you know they don't write.

Q. Have you ever been granted permission to help another inmate?

A. No, I have not.

Q. Has any inmate been given permission to help you?

A. No, they have not.

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[Vol. II, 28:9-30:12]

[Page 28] Could you tell the Court some of the reasons about why you would not go to the Inmate Legal Assistant, just generally, is it just competence or are there other reasons?

A. The reasons I did not use the former Legal Assistant, Mr. Maddox, was for the reason that there were certain areas of my personal cases that I did not care to have the Inmate Legal Assistants know. In other words, I think the communications between me and the courts and my personal case and the courts and my lawyers was not such that I could allow the Inmate Legal Assistant to have access to this information. As to the present Inmate Legal Assistant, there is the same thing. There are many things that I will discuss with the present Inmate Legal Assistant that I would not with the former one

[Page 29] A. (Continuing) as Mr. Hoffman is a far more qualified or has a better ground in law than the previous one.

Q. You have been in the penal complex since February of 1970, that is not quite two years. Do you consider that you know the general attitude of the prisoners not on any specific cases but with regard to how they feel about having their trials and personal knowledge known by other inmates?

A. Yes, I know it very well.

Q. Does the inmate population generally feel this way, the way you do, that they do not like having someone arbitrarily designated by the administration to be privy to their court proceedings and personal matters?

A. Yes.

Mr. Kammerlohr: I will object to this, Your Honor, he is again calling for a conclusion, hearsay, and it is incompetent.

The Court: He says he knows. Overruled.

A. (Continuing) The general consensus of the majority is similar to mine, that many of them vehemently oppose having any knowledge of their case for various personal reasons, the type of crime and so forth, the different types of actions and their particular case, of allowing this information to

[Page 30] (Continuing) get out in the general population which can cause many hard feelings and lead to repercissions of a violent nature, and the other is the fact that many people feel that when they submit information to the Legal Assistant's office that this information is going strictly straight to the administration which leads them to a very vulnerable situation.

Q. That is just the general feeling?

A. This is the main reason why some people do not submit some of their stuff, they will discuss some of it, but they won't discuss all of it.

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[Vol. II, 53:1-22]

[Page 53] Q. (By Mr. Duchek) Mr. McDonnell, have you ever been called up before the Adjustment Committee?

A. The Disciplinary Committee?

Q. Have you ever been called up before the Disciplinary Committee?

A. Yes, I have.

Q. Well, it is now called an "Adjustment Committee", are you saying when you were called up before it it was called the Disciplinary Committee?

A. As far as I know it is still a Disciplinary Committee whether that is the way it is referred to or not.

Q. Do you know what date that was?

A. I have it in my notes, but I don't, just offhand here, I can't say.

Q. Do you remember why you were?

A. Well, I didn't know when I went there at the time.

Q. When did you first learn why you were called before them?

A. When I walked into the captain's office where they were holding it, and Mr. Wolff, and I think Mr. Phillips were in there.

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[Vol. II, 54:11-14]

[Page 54] Mr. Duchek: Your Honor, I would only call the Court's attention to the rules which have been stipulated to in Exhibit C. They do not call for prior notice. I think that is sufficient.

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[Vol. II, 72:18-74:8]

[Page 72] The Court: Mr. McDonnell, how much education have you had?

A. Twelfth grade.

The Court: Did you graduate?

A. Yes.

The Court: What school?

A. Denfield, Duluth, Minnesota.

The Court: Have you been married?

[Page 73] A. No.

The Court: You don't have a family?

A. No.

The Court: Are your mother and father still alive?

A. No.

The Court: You have no dependents?

A. No.

The Court: You testified that you had been in three other institutions, I believe, and one was in South Dakota, was it?

A. No, it is Colorado and Idaho.

The Court: It was in Colorado and Idaho?

A. Yes.

The Court: How does the Nebraska Penal Complex compare with those other institutions with reference to the allegations you make in your complaint here?

A. Well, the period of time that I was in Texas some years ago, but as far as to say that in none of the other three institutions have I had any legal work done either on my criminal case or on a civil case or any legal work at all until I come to the Nebraska Penitentiary, and I was completely frustrated.

[Page 74] The Court: They wouldn't allow you to?

A. No.

The Court: Did they have a law library for you?

A. There was a law library of sorts when I come to the Nebraska Penal Complex.

The Court: No, I mean in the other institutions?

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[Vol. II, 75:17-78:22]

[Page 75] The Court: Mr. McDonnell, tell this Court in your own words right now today what your specific objections are? Now, not just general objections to being incarcerated, anybody would object to that, but since Mr. Wolff has taken over, things have been fairly decent, haven't they?

A. There has been a great sign of improvement.

The Court: What specifically are you complaining to this Court about?

[Page 76] A. Specifically, the main three areas I am complaining to this Court about at this particular day and this particular time is, one is the good time arrangement that they just arbitrarily—a guard will just arbitrarily say, "Well, you are doing something wrong and we will write you up." You know nothing about it. A day or two days later you are called up to court and Mr. Wolff or one of his representatives say, "We sentence you to spend 10 more days in the Nebraska Penal Complex." By taking your good time away that is in effect what they are doing.

The Court: You understand there is a difference between discretionary good time and statutory good time, do you not?

A. Yes, but the thing is that this is when you appear in front of a disciplinary committee.

The Court: Well, what your complaint is that you don't have enough notice to prepare a defense, is that right?

A. You don't have notice and you are not even allowed to even contest the charges other than the fact that Mr. Wolff or his representatives just say, "We have written so-and-so up for being on the wrong tier and we are taking away so much good time."

[Page 77] A. (Continuing) And you say, "I didn't do it." and they say, "You lost ten days. Next man."

That, in essence, is your hearing. I think if a man is going to be sentenced to spend ten days longer in the Nebraska Penal Complex by this arbitrary method his very first thing to do I would say would be to contact the guard that wrote him up for the infraction but the thing is you are not allowed to do that and you are getting no notice before going up there.

The Court: So what you are complaining about then is you are sentenced to additional time, you really are not sentenced to additional time, you just have good time taken away from you?

A. You have good time taken away from you, right.

The Court: And you claim that good time is being taken away from you without due process of law?

A. Without due process.

The Court: That is your first complaint. Now, what is your second complaint?

A. The second complaint is with the legal services as they are now.

The Court: You think that if you want to go to see John Doe down there to help you with a case, [Page 78] you ought to have the right to do so?

A. I think that everybody in the Nebraska Penal Complex if he has a legal problem should be able to ask legal advice to find the best way out. As it is now, and I am very far from being a good legal advisor, and I would like to pass off people who ask me for advice.

The Court: Are there any lawyers in the penitentiary down there?

Mr. Kammerlohr: I don't believe there are now, Your Honor. There have been.

The Court: Off the record.

(Colloquy between counsel and the Court)

The Court: Of course, you know we have rules about practicing law, too?

A. Yes.

The Court: So it has to be someone that is fairly intelligent who has prepared themselves and with 900 inmates the warden could not designate 50 men to be legal advisors.

A. Right.

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[Vol. II, 88:4-89:13]

[Page 88] The Court: Do you know that since 1983, The Civil Rights Amendment, was passed, do you know that the cases out of the penitentiary have increased over 400 per cent? We are getting to the point where even the prisoners can't get hearings. You have had a case on file since July 1, 1970.

A. That is right.

The Court: You have had two hearings, one down in front of Judge Urbom's court and one up here.

A. Yes.

The Court: So you can't object to the legal process. We are trying to do a job.

I know that you work for the benefit of yourself. I get up at 6:00 every morning and I am down here by 7:30 and I work many nights until midnight or maybe 1:00 or 2:00 o'clock trying to get this job done because I feel I owe a responsibility and I think you, as an inmate, in trying to rehabilitate yourself so you can be a good citizen have a responsibility if you want [Page 89] to claim privileges under the constitution which you are entitled to. You don't lose your constitutional rights when you go to the penitentiary, but you have some responsibilities, too, and that is why I am saying to all of you here, I am perfectly willing to sit here and listen to this case but

I think the things that this man has told me here should be able to be worked out, and, Mr. Wolff, I compliment you, I think you are doing a good job in trying to make some changes and I think you feel that way, too.

A. I think he is.

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(Title omitted in printing)

TESTIMONY OF CHARLES WOLFF

[Vol. II, 92:9-96:18]

[Page 92] Q. What is your position, Mr. Wolff?

A. Warden at the Nebraska Penal and Correctional Complex.

Q. And when did you take over the job of warden?

A. July 16, 1971.

Q. Just to clear up one point here earlier, has the plaintiff, Mr. McDonnell, been before the Disciplinary Committee since you have been warden to lose good time?

A. No, he has not.

Q. So what he has testified here earlier about losing good time and the procedures therein had nothing to do with since you have been warden?

A. That is correct.

Q. All right, Warden, would you explain to us now, under your administration since you have been warden, what happens when a man is written up or charged with a prison violation?

[Page 93] A. Well, he is normally written up by an employe for rule infraction and that rule infraction is forwarded to the office of the Chief Correction Supervisor who reviews these each day because in this area where a man is written up the individual inmate is called

up and he is also called up during the time the supervisor is in there, or employe I guess I should say that has written him up. They discuss this matter with each other and the Chief Correction Supervisor and this is reviewed at that time as to the severity of the offense, the circumstances involved, the thinking of both parties, and this information is also noted as part of the investigation in the misconduct report and this is sent to the Adjustment Committee. The Adjustment Committee then calls the individual up—

Q. The inmate?

A. The inmate, either that day or the following day or as soon after the investigation has been completed as is possible he is brought in before a three-man committee that normally consists of the Associate Warden for Custody, the Superintendent of Industries, and either a counselor or the Director of the Reception and Diagnostic Center. [Page 94] At this time the individual is apprised of the misconduct report. It is read to him and discussed. He is given an opportunity to talk and then upon conclusion, the Adjustment Committee has him leave the office or room and at that time they come to a decision in terms of what the penalties are going to be. That can be held in abeyance. It can be with a verbal reprimand. It can be removal of good time, placed on restriction, and if there is a major or serious offense the decision could involve going to the Adjustment Center and being placed on a restricted diet and this is the way it is handled.

Q. When the matter is before the investigating officer, suppose the inmate denies the charge, is he allowed to examine the guard that put him on report, for example?

A. Well, he is allowed to ask the individual that has written him up questions, and they talk about it, and normally during the investigation, the things are resolved. Sometimes it is necessary for the investigating officer to go forward. Maybe he has to contact additional employes, or even additional inmates, to try to get it re-

solved and determine the actual circumstances surrounding [Page 95] the incident.

Q. All right, suppose that it gets up before the committee and the inmate is brought in and he still denies he was guilty of this offense?

A. Well, at that point in time after the committee has reviewed the facts, the investigation information and the original write-up, and they have talked to the inmate, then it is the responsibility of the committee to do one of two things, conduct additional investigation if there are any gray areas that are not understood or to make a decision based on the facts they have available if they feel this is adequate.

Q. Do you ever bring the accuser up there before the committee?

A. He has been, on occasion, more than anything else now, with the Chief Correction Supervisor bringing the individual that initiated the misconduct report and the inmate together, the major portion of these things are resolved at that point, namely, the misconduct reports do not go on to the committee and are held at that point and there is no action taken once it is resolved to the mutual agreement of the inmate and the officer himself.

Q. Do you have any idea of the percentage of them that [Page 96] are just out and out not resolved, in other words one side says one thing and the other side says something else? Do you have to decide who is telling the truth?

A. Not very many, quite frankly, the inmates even when they are wrong in the most part will admit their guilt in something that they are involved in and these things are resolved between the supervisor, the inmate and the investigating officer. In most cases, this is what happens. There are some cases that are, some cases that must go on, and there are some, a very small number, that require additional investigation and there are some cases that only the Adjustment Committee can resolve,

and after they have conducted the hearing, then they can make a decision on it. These are a small number, though, a very small percentage.

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[Vol. II, 102:25-109:16]

[Page 102] Q. Now, I would like to go into the Disciplinary Committee [Page 103] proceedings a little, and to do that I believe you brought the file for Douglas Rhodes and at my request you were kind enough to do so without a subpoena?

A. Right.

Mr. Duchek: Could I bring that up to him, please? May I approach the witness?

The Court: You may.

Q. I think that by 11-12 of this year the new procedures were—that is November 12th of this year—they were in effect, so, to the best of my knowledge, when you were directing Mr. Lyons to cooperate with you when he was written up on November 12th, there should be one of these new reports in the file regarding the disposition taken toward him, one of the write-ups that involved the procedures now in effect, is that right?

A. Right.

Q. And so that would have the new form in there or —well, when the new procedure went into effect, the forms available for writing up an inmate were expanded, were they not, to allow for more investigation, is that correct?

A. Correct.

Mr. Duchek: I would like to put one of those forms now being used into evidence so the Court can [Page 104] see the size of the form and the nature of the investigation that goes on.

The Court: Do you have copies?

Mr. Duchek: No, I don't. I was not allowed to have the file without a court order, but now that we are in court—

The Court: Mr. Wolff, could you send the Court one of those forms?

Mr. Wolff: I certainly will.

The Court: Let the record show that the Warden will furnish a copy of the form to this Court which will be made a part of the record and will be designated as Exhibit Number 6.

Mr. Kammerlohr: It is the new form he is referring to, isn't it?

The Court: Yes.

Mr. Kammerlohr: The new rules didn't go into effect until April 1st which is after the time he is speaking about.

Mr. Duchek: I thought it was November 12th of this year.

Mr. Wolff: He is talking about November 12, 1971, which is the date of this incident here.

The Court: Do you have any objection to this Exhibit Number 6?

[Page 105] Mr. Duchek: No, may I have a copy of that?

The Court: Yes and send Mr. Duchek a copy.

Mr. Wolff: Certainly.

Q. (By Mr. Duchek) As I understood your testimony, Warden, there are two phases, there is the investigation phase and that involves the person doing the write-up and also the inmate who is charged with something specific and they do get together and conceivably they talk about it and the man doing the accusation and also the person accused, is that right?

A. That is correct.

Q. And then we have the committee hearing. The report comes in but the officer that did the writing up is not in front of the committee at that time, is that correct?

A. That is correct.

Q. So that the only real confrontation comes in the investigation stage, and now you used the word "guilt" you said that oftentimes an inmate admits his guilt and that has the sound of an adversarial or criminal type setting.

A. They meet in the Adjustment Committee.

Q. What is the purpose of the Adjustment Committee, what is it?

A. The primary responsibility of the Adjustment [Page 106] Committee is to maintain discipline within the Nebraska Penal Complex. It is as much as possible those individuals that are responsible for being involved in rule infractions that are not properly handled by administrative proceedings in terms of discipline, in order to maintain the institutional routine and the proper discipline of the occupants.

Q. Would you characterize it as part of the rehabilitative process or part of the criminal process?

A. This part of the discipline.

Q. And so it does have what we call in the Anglo-American legal system criminal overtones in that there are reprimands taken against the person. You don't regard it as rehabilitative in nature necessarily, do you?

A. Yes, I do, much as I would a child or anybody else that was in a society. There is no difference, I think that the approach to discipline does not have to be of a derogatory nature in any area like this. I think discipline can be handled as long as it is handled constructively and intelligently, it can have a rehabilitative effect.

Q. What would be your objection to giving an inmate anywhere from 24 to 48 hours notice on a write-up that he is going to have to answer to prior to the time of [Page 107] his appearing before the committee?

A. I think that essentially now that is precisely what we have given.

Q. You mean through the investigation?

A. Through the investigation, he knows at least 24 hours ahead of time that he is going in front of the committee.

Q. Does he receive any kind of formal delineation of the exact charge that he will have to answer to?

A. It is read to him.

Q. By the investigating officer?

A. Right, and it is reviewed with him because it is the individual's right to know.

Q. Now does he know when it is read to him that he was definitely going to be called up before the committee or does he find out if he is going to be called up before the Adjustment Committee the very night that he is actually called?

A. No, he is told, if he is going to be called up before the Adjustment Committee or that the particular conduct report is not going to have any action taken, he is told one way or the other.

Q. During the investigation?

A. Right, at the termination of the investigation.

Q. Well, since it is your policy in the investigative [Page 108] stage to give them a chance to answer initially, would you have reservations about giving them a 24 to a 48 hour notice in writing of what they are going to have to answer to and then also having the person that did the writing up there to be before the committee, the committee that finds the guilt so they can interview each

one personally, because in a criminal setting, we let the jury see both the accuser and the accused?

A. Well, we are getting into a—we are getting into an awfully complex area of time elements in our discussions here and I would like to consider that. What you are saying is not all wrong, but sitting here on this stand today I won't be able to give you an answer.

Q. Yes, I won't expect you to do that. But if we did come forward with a plan like the one that was recently suggested in the Maryland District Court, I presume you would be willing to consider it at least and it did provide for some more adversarial situation?

A. Yes, I would consider it.

Q. (Continuing) In front of the committee itself?

A. It is used in some parts of Illinois.

Q. And they have a little bit more adversarial situation, I don't believe they allow lawyers necessarily, but [Page 109] they do at least bring the accuser into the room with the accused and let the committee see them there.

Mr. Kammerlohr: Your Honor, I am sure Mr. Wolff would be willing to consider any suggestion they might offer, but I do object to the implication that someone is sitting over the prison administration monitoring everything they are doing unless constitutional rights are actually involved, and thus far I don't think there has been any evidence of any constitutional rights being involved as far as the disciplinary committee is concerned.

The Court: All right, we have got this much evidence in and I think that is as far as we will go into this. Take up your next line of questioning.

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[Vol. II, 110:8-10]

[Page 110] Mr. Duchek: I will inform the Court that a large percentage of them are directed toward the Adjustment Committee and the good time procedures.

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[Vol. II, 114:18-116:5]

[Page 114] Q. Do you stop mail coming from either courts or lawyers?

A. No.

Q. You do open it?

A. We do open it.

Q. But you don't stop it?

A. We open it. We inspect it. Predominantly, the consideration of censorship is the control of contraband in and out of institutions such as [Page 115] drugs and items of this nature. This is specifically why we concern ourselves with the mail.

Q. And it would be possible for, say, one thin sheet of paper to carry a saturation of drugs on it?

A. It will carry enough LSD to kill a man.

The Court: Do you know of any situation, whether it has been a letter to a judge or from a judge or a letter to a lawyer or from a lawyer that has not been delivered or refused delivery either to or from an addressee or an addressor?

A. I have no knowledge of any not being delivered or received.

The Court: During the time you have been with the Penal Complex?

A. That is correct.

Mr. Duchek: Your Honor, the stipulation which we entered into describes in the very first paragraph the mailing procedures prior to October of 1970, and I think they have just slipped the witness' mind. There was a situation where mail would not be forwarded to a judge under the old rule as they stipulated to them but as we understand it since October 28th of 1970, that is no longer the case.

[Page 116] A. This is correct. At that time, as I understand it all those—this was on a situation that involves Mr. Jones directly and he will clarify that for you. He has the direct knowledge of anything in this area. I do not.

(Title omitted in printing)

TESTIMONY OF RONALD B. JONES

[Vol. II, 139:2-18]

[Page 139] Q. From your knowledge of the mail procedures how complicated would it be to have an inmate present in the room when a letter from an attorney or a Judge to an inmate is opened?

A. How complicated?

Q. Yes?

A. I believe you have got a security risk when you do that.

Q. And that is just in moving of the inmate to a particular room where it is to be opened? Is that the security risk or what is the security risk?

A. If you put an inmate in the mail room?

Q. No, it would have to be a different room?

A. Only the time element, I would hope we have got some other things to do in the institution except that type of thing, a little administration, we hope.

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(Title omitted in printing)

STATEMENTS BY THE COURT

[Vol. II, 146:6-147:8]

[Page 146]

But this business about "process", the Courts more and more are going to the procedural aspect of every person, no matter what their situation they find themselves in are entitled to due process, and Mr. Wolff, as Warden, it would seem to me that you are trying to establish process that you have mimeographed machines that you can send out these forms and you can serve a copy on the prisoner 24 hours before he is to come up, at least this man testified to this Court today that he was handed a notice at 5:00 o'clock that he had to appear before the Adjustment Committee and he walked in there and said, "What's the story?" and he told them he wasn't guilty and that is it. Well, of course, there are two sides to everything, but if there is any possibility—I don't want you to run a judicial trial, but if you can let him know what he is charged with, give him an opportunity to tell you what he thinks are the true facts, and also the person who puts him on [Page 147] report, if you can have them present to tell the true story, it seems to me that that is the fair, American way to do it and I have a strong feeling that there are certain responsibilities on these prisoners, and I am not going to run your penitentiary for you, but I know in reading, and I read constantly, that a lot of the problems such as Attica and places like that where they have prisoner rebellions, it is just little things, and if you can work out these little things, you will have a much more satisfactory regime down there. They are still human beings and our first job is to rehabilitate them. Our second job is to deter others from committing the same crime. We are not a vindictive type of government. They have done a wrong. They must pay the penalty, but they are still human beings. Keep that in mind all the time.

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The District Court summarized the testimony of inmates of the Nebraska Penal and Correctional Complex in its opinion. However, the following affidavits are included in full as illustrative of such testimony.

[Vol. II, p. 143—Affidavits received]

AFFIDAVIT OF DAVID L. RICE

On several occasions I have received unmailed letters to my attorney back from the mail room with slips attached informing me that my attorney (David Herzog) is not on my mailing and visiting list. These letters were often held up three or four days before I would get them back with the "not on authorized mailing and visiting list." These kind of letters served to prevent me from communicating with my attorney certain requests, etc. that had needed to be dealt with in a particular span of time. I believe this action, and other similar ones, were attempts on the part of administration to harass me because of my race and my political beliefs.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

On Monday, November 16, '7', I received notice that I was deleted from the gavel club roster for not standing up for the pledge of allegiance and invocation at gavel club meetings. In a period of approximately two months, the following inmates were deleted: Larry Woods, Bobby Maxwell, Charles Marion, Ad Strong; all for not standing for the pledge of allegiance and (or) invocation. Another inmate deleted is Lawrence Coran, for criticizing the gavel club sponsor. I have reason to believe that the deletion of these inmates was an attempt to stifle the rapidly increasing growth of gavel club's black membership. I fur-

ther understand that the person responsible for directing the gavel club sponsor to make these deletions is Scott Miller, the associate warden. There is nothing in the gavel club constitution, policy, or by-laws that makes standing for the pledge of allegiance mandatory. And, further, the governing rules of gavel club do not provide that anyone outside of the gavel club membership can oust a gavel club member. As a matter of fact, the gavel club's rules state that a member is to be expelled by a majority vote of its members. Scott Miller is not a member of gavel club, nor is the sponsor of gavel club. I feel, as do parties similarly affected by the above mentioned deletions, that Scott Miller is acting both with racism and with no legal foundation for such action.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

It was in (I believe) the month of June ('71) that I was sent to the adjustment center for "refusing a direct order to work." During the proceedings, I requested to produce witness to show that I had not refused to work. This request of mine was denied by the adjustment committee. Nor was I faced by my accuser, shop foreman Gillespie. I also lost a number of days good time. I spent 5 days in the "hole".

/s/ David L. Rice

Shortly after I was released from the adjustment center, I was brought before the adjustment committee again. This time the "infraction" was "refusal to work" again. I had been accused by foreman Gillespie. When a check to the hospital showed that my "refusal to work" had actually been a "lay-in" by the hospital, resulting from an injured leg; the incident report was held in abeyance.

I believe that the incident report since it had not been supported by evidence, should have not been held in abeyance to be used as a future weapon. I believe it should have been destroyed.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

I am being repeatedly harrassed (sic) by the institution, specifically Mrs. Hubble and another woman, who are responsible for checking in the women visitors. The harrassment (sic) takes place in the form of my woman visitor (Anna Dahlin, who is white) having to be interrogated as to the kind of underwear she is wearing, whether or not she is wearing a slip, etc. She purposely wears long ("maxi") dresses in order not to be harangued. On one occasion, about 3 months ago, she wore a skirt that hung about 2 inches above the knee and was told in a very rude manner that the next time she would wear such a skirt, she would be required to leave. Now it so happens that I have commonly seen female visitors of inmates wear skin-tight pants and dresses and skirts that expose the thighs of the wearers, even while they are in a standing position. I have every reason to believe I am being harrassed (sic), through the mistreatment of my woman. Because of the facts that I am black while she is white and that I am a prisoner who has been labeled a "militant (political prisoner)."

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

Shortly after I arrived into the institution, the mailing and visiting privilege was increased from 2 visits per month to 3 a month and outgoing letters from six per week to an unlimited number per week. When the administration first informed the population of this change, the impression was given that the change was a matter of *policy*. Yet, on the first occasion I was sent to the adjustment center I was told at the hearing before the adjustment committee that the increased visiting and mailing was not policy, but a *bonus*. I was told that I was to lose my "bonus" of the "extra" visit and would be placed back on the six outgoing letters per week. Also, I was informed that the *policy* was to take away this "bonus" for a period of *one year*, even though another inmate had his "bonus" taken away for *six months*. This matter occurred on or about the 25th of June and I wrote a grievance report on the 28th of July, but no action has been taken.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

Since I came to this institution in April, I have been requesting that I be able to teach English in the prison school. And I have repeatedly denied this request by Edith Whiting (Dir. of Education), Warden Wolff, and the sub-classification committee. I have been told by Edith Whiting that I will not be allowed to teach in the school because of my "attitude" and because of my philosophy. I have been told the same by Warden Wolff.

I feel that, since I scored 143 in verbal aptitude, 120 in intelligence, 136 in form perception, and 136 in clerical perception, that there is little doubt that I have sufficient

English skills to be tried, at least, as a teacher. The above scores are from the general aptitude test battery, which I took while I was in the reception and diagnostic center. In the California achievement test I scored 14.4 in reading (2.4 yr. in college), 15.3 in language (3.3 yr. in college). Whereas it is true that my one year of college was not productive gradewise, I have since been published in several periodicals, newspapers, literary magazines, etc. I believe, everything as it is, that I am being discriminated against in employment by Warden Wolff and Edith Whiting because of my political advocacy.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

I have been harrassed (sic) by prison officials, in the form of these incident reports, several times. At none of these resulting meetings with the "investigator (Captain Nance)" or with the adjustment committee was I allowed to present witnesses in my behalf. At none of these times (but once, when the Warden himself was the author of that particular incident report) was I afforded the courtesy of peing faced by my accusor.

Also, of all the times I have been "written up" (9 times as I recall) I have never been informed of such a "write-up (incident report)" prior to going up for "investigation" by Captain Nance or to a proceeding of the adjustment committee. Also, it is my *understand* that, though only three of these nine alleged infractions were acted upon, the others are yet being held in *abeyance.*

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID L. RICE

On Sept. 8, '71, I was sent to the adjustment center by the adjustment committee and the warden. The "infraction" that was behind my going before the committee was "refusing the warden's direct order to get a haircut." When, during the proceedings, I showed very clearly that I had gotten a haircut, the warden (Wolff) said, "I'm not satisfied with your haircut." I spent 43 consecutive days without being allowed outside for exercise. From September 20th, I was placed in the "dry cell." I remained there for 12 days; during which time I was refused my legal papers. And, also, I *lossed* some days good time.

/s/ David L. Rice
27768

(Jurat omitted in printing.)

AFFIDAVIT OF DANNY HART

On Feb. 8th, 1971 I was held in solitary for almost three weeks without being allowed to contact my court appointed attorney by holding me incommunicato (sic) the warden denied me a chance to prepare my defense against the escape charges against me. This is a matter of court record in the State v. Hart, Hastings, Nebr. Judge Fred Irons.

On or about March 22, 1971 all of my mailing and visiting was ordered stopped because of the fact that I had allegedly mailed letters to the World Herald and Sen. Ernest Chambers. With the prison making no explanation to my family or friends why they could no longer contact me or I them.

I was placed in "solitary" for over a month due to the fact that the warden accused me of organizing a protest against him. Though he never produced any other conspirators, thus he placed me in solitary for something that never took place.

I have been and still am denied the right to write to the U. S. Senator from my native state, Sen. Jack Miller.

/s/ Danny Hart

(Jurat omitted in printing.)

The opinion of the United States District Court for the District of Nebraska is found at Petition for Writ of Certiorari, App. 15-47, inclusive.

The opinion of the United States Court of Appeals for the Eighth Circuit is found at Petition for Writ of Certiorari, App. 1-14, inclusive, and App. 49-50, inclusive.

[Vol. V, p. 14] JUDGMENT

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

September Term, 1972

No. 72-1331

Robert O. McDonnell, etc.,

Appellant,

vs.

Charles L. Wolff, Jr., etc., et al.,

Appellees,

No. 72-1332

Robert O. McDonnell, etc.,

Appellee,

vs.

Charles L. Wolff, Jr., etc., et al.,

Appellants.

Appeals from the United States District Court
for the District of Nebraska

These Causes came on to be heard on the record from the United States District Court for the District of Nebraska and were argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court of April 21, 1972, in these causes, be, and the same are hereby, affirmed in part and reversed in part.

And it is further ordered by this Court that these causes be, and they are hereby, remanded to the said District Court for action consistent with the opinion of this Court this day filed herein.

August 2, 1973